



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 29 2013

CERTIFIED MAIL 7012 1010 0001 8097 4090
RETURN RECEIPT REQUESTED

Dr. Corey Gaiser
2357 Foxworth Drive
Panama City, Florida 32405

Re: Administrative Compliance Order on Consent
Docket No. CWA-04-2013-5750

Dear Dr. Gaiser:

Enclosed please find an executed copy of the above-referenced Administrative Compliance Order on Consent (AOC) Docket No. CWA-04-2013-5750. This AOC requires the restoration of approximately 3.1 acres of excavated and filled forested wetlands in accordance with the August 2012 Wetland Restoration Plan submitted by Ecological Resource Consultants, Inc. The U.S. Environmental Protection Agency, Region 4 has retained the original copy for our enforcement files.

Thank you for your cooperation in this matter. If you have any questions regarding this AOC, please contact Mr. Mike Wylie, of my staff, at (404) 562-9409.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Giattina", written over a horizontal line.

James D. Giattina
Director
Water Protection Division

Enclosure

cc: See attached list

Mailing List

Ms. Teresa Morgan
U.S. Army Corps of Engineers, Jacksonville, FL

Mr. Terry Wells
U.S. Army Corps of Engineers, Pensacola, FL

Mr. Lance Laird
Northwest Florida Water Management District, Crestview, FL

Ms. Amelia Savage
Hopping Boyd and Sams

Mr. Eric Olsen
Hopping Boyd and Sams

IN THE MATTER OF:)	
)	
Dr. Cory Gaiser)	ADMINISTRATIVE
Panama City, Florida)	COMPLIANCE ORDER
)	ON CONSENT
)	
RESPONDENT)	Docket No.: CWA-04-2013-5750
)	

1. Section 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(a), provides that, whenever the U.S. Environmental Protection Agency (“EPA”) finds that any person is in violation of any condition or limitation which implements, *inter alia*, Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344, the EPA may issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that the EPA determines to be reasonable.

II. Findings of Fact and Determinations of Law

3. This AOC pertains to the deposition of dredged and/or fill material into waters of the United States including approximately 3.4 acres of forested wetlands that are adjacent to an unnamed tributary to Foxworth Mill Creek. The unauthorized activity is located at 700 Dove Drive in Marianna, Jackson County, Florida, near latitude 30.619569°N and longitude 85.321145°W ("Discharge Area") (See Exhibits A and B). The deposition of dredged and/or fill material occurred during road and pond construction on the subject property.

5. On May 19, 2011, the Corps conducted a second inspection of the Respondent's property and determined that approximately 3.4 acres of forested wetlands had been excavated and/or filled during the construction of a pond and an access road.

6. The Corps referred the CWA violation to the EPA on June 28, 2011.
7. On September 19, 2011, the EPA issued a CWA, Section 309(a) wetland restoration order and a Section 308 information request to the Respondent.
8. After several subsequent telephone conferences between the EPA, the Respondent and his representatives, the Respondent submitted a wetland restoration plan to the EPA on August 24, 2012, through his consultant Ecological Resource Consultants, Inc.
9. Dr. Cory Gaiser ("Respondent"), is a person within the definition set forth under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
10. Respondent at all times relevant to this AOC, was the owner and/or operator of an 80-acre tract of land located at 700 Dove Drive in Marianna, Jackson County, Florida, near latitude 30.619569°N and longitude 85.321145°W ("the Site") that contained the Discharge Area.
11. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except in compliance with a permit issued under, *inter alia*, Section 404 of the CWA, 33 U.S.C. § 1344.
12. Commencing on or about June 2007 to the present, Respondent and/or those acting on behalf of the Respondent, discharged dredged and/or fill material into forested wetlands on the Site using an excavator and a bulldozer during unauthorized activities associated with the construction of an access road and a pond.
13. Respondent's unauthorized activities impacted approximately 3.4 acres of forested wetlands that abut an unnamed tributary to Foxworth Mill Creek, a tributary of Dry Creek which flows to the Chipola River, a navigable-in-fact water of the United States.
14. The discharged dredged and/or fill material, including earthen material deposited at the Discharge Area, are "pollutants" as defined under the CWA Section 502(6), 33 U.S.C. § 1362(6).
15. The excavator and bulldozer employed by the Respondent to deposit the dredged and/or fill material at the Discharge Area are "point sources" as defined under the CWA Section 502(14), 33 U.S.C. § 1362(14).
16. A "discharge of a pollutant" as defined at Section 502(12)(A) of the CWA, 33 U.S.C. § 1362(12)(A), is any addition of any pollutant to navigable waters from any point source.
17. Respondent's placement of the dredged and/or fill material into the Discharge Area constitutes a "discharge of pollutants" as defined under the CWA Section 502(12), 33 U.S.C. § 1362(12).

18. The term "navigable waters" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), means the waters of the United States, including the territorial seas.

19. The Discharge Area includes "navigable waters" as that term is defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

20. At no time during the discharge of dredged and/or fill material into the Discharge Area from June 2007 to the present, did the Respondent possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the discharge of dredged and/or fill material by Respondent. Each discharge by the Respondent of pollutants into navigable waters without the required permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

21. Each day the material discharged by the Respondent remains in waters of the United States without the required permit under Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

22. Therefore, Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, by discharging pollutants into navigable waters without a permit.

III. Agreement on Consent

Based on the foregoing **FINDINGS OF FACT AND DETERMINATIONS OF LAW** and under the authority of Section 309(a) of the CWA, (33 U.S.C. §1319(a)), The **RESPONDENT HEREBY AGREES AND CONSENTS TO THE PROVISIONS OF THE PARAGRAPHS BELOW.**

23. Respondent shall perform the following actions:

ON-SITE RESTORATION

a. Within sixty (60) days of the effective date of this AOC or necessary approvals from the Northwest Florida Water Management District, whichever is later, Respondent shall implement the Ecological Resource Consultants, Inc., August 24, 2012, site restoration plan ("Restoration Plan") attached hereto and incorporated herein as Exhibit C. The removal of all fill material on the access road and restoration of the pond, (except for two 0.15-acre stock ponds at the north and south end of the restored pond) to nearby undisturbed, wetland elevation, as described in the Restoration Plan, shall be completed at the Site within six months of the effective date of this AOC or necessary approvals from the Northwest Florida Water Management District, whichever is later.

b. Respondent shall stabilize all restored wetlands with appropriate best management practices including, but not limited to silt fences; vegetative ground cover; or a wetland herbaceous seed mix if regeneration from the existing seed source in the soil is not successful.

c. Respondent shall reestablish the forested wetlands that were excavated and/or filled by re-planting two hundred (200) forested wetland species per acre on the Discharge Area. Suitable forested wetland species include: loblolly bay (*Gordonia lasianthus*), sweetbay (*Magnolia virginiana*), swamp bay (*Persea palustris*), swamp tupelo (*Nyssa sylvatica* var. *biflora*) and pond cypress (*Taxodium ascendens*). However, no species should comprise more than thirty (30) percent of the total forested wetland species re-planted.

d. Restoration must be completed within six months after receipt of the signed AOC. However, if state or local permits are not issued in a timely manner and/or weather conditions prevent Site restoration within the six month restoration period, Respondent shall inform the EPA of the issues involved and request a time extension not to exceed one hundred and twenty (120) days. Within thirty (30) days after completion of restoration, the Respondent shall submit a written statement of completion to EPA.

e. The Respondent shall inspect the restored area annually for three years after completion of initial wetland species reestablishment to determine success of the restoration plan. After each inspection, the Respondent shall replace non-viable wetland species with the number of target wetlands species to ensure the Restoration Plan's vegetative success criteria of fifty (50) percent survival, including volunteer species, is achieved. Wetland species should be replanted during the next vegetative dormant season following the annual inspection. Annual monitoring reports are due by December 31 of each monitoring period and shall include:

1. Date of inspection;
2. Color photographs from the same locations;
3. An estimate of the number of planted wetland species that survived; and
4. The number of wetlands species replanted (if required) to reach the fifty (50) percent survival rate.

24. Any documentation required to be submitted in this agreement shall be mailed to the following address:

Mike Wylie
U.S. Environmental Protection Agency
Water Protection Division
Wetlands Enforcement Section, 15th Floor
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

IV. GENERAL PROVISIONS

25. The provisions of this AOC shall apply to and be binding upon the Respondent, its agents, servants, employees, successors, and assigns.

26. If the Site is transferred prior to completion of the requirements of this AOC, such transfer will not absolve the Respondent from the responsibility of implementing and completing the obligations under this AOC or insuring that these requirements have been met. Completion of the requirements of this AOC will remain the responsibility of the Respondent.

27. This AOC is not and shall not be construed to be a permit under the CWA or its implementing regulations. This AOC does not exempt the Respondent from compliance with, or the requirements to obtain, any city, county, or state permits or authorizations before proceeding with the restoration activities. However, after the restoration plan is deemed final and complete, the EPA acknowledges that the two remaining stock ponds on the Site are exempt activities pursuant to the CWA, Section 404(f) exemptions.

28. Respondent acknowledges the jurisdiction of the EPA to issue this AOC.

29. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue of fact or law set forth in this AOC, including, but not limited to, any right of judicial review of this AOC under the Administrative Procedure Act 5 U.S.C. §§ 701-706.

30. This AOC does not constitute a waiver, suspension, or modification of the terms and conditions of the CWA or its implementing regulations. Issuance of or compliance with this AOC does not relieve the Respondent from responsibility to comply with all requirements of the CWA, its implementing regulations, and any legal order issued under the CWA or its regulations.

31. Issuance of this AOC shall not be deemed an election by the EPA to forego any Administrative, Civil, or Criminal action to seek penalties, fines, or other appropriate relief under the CWA for the violations set forth in the Findings.

32. Failure to comply with the terms of this AOC may result in your liability for statutory civil penalties under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should EPA commence an action seeking penalties for violations of this AOC, a United States District Court may impose civil penalties if the court determines that Respondent has violated the CWA and failed to comply with the terms of the AOC.

V. EFFECTIVE DATE

33. This AOC shall become effective upon the Respondent's receipt of the signed AOC.

FOR THE RESPONDENT:



Dr. Corey Gaiser

Date: 2/1/13

**FOR THE U.S. ENVIRONMENTAL
PROTECTION AGENCY**



James D. Giattina
Director
Water Protection Division
U.S. Environmental Protection Agency
Region 4

Date: 3/28/13

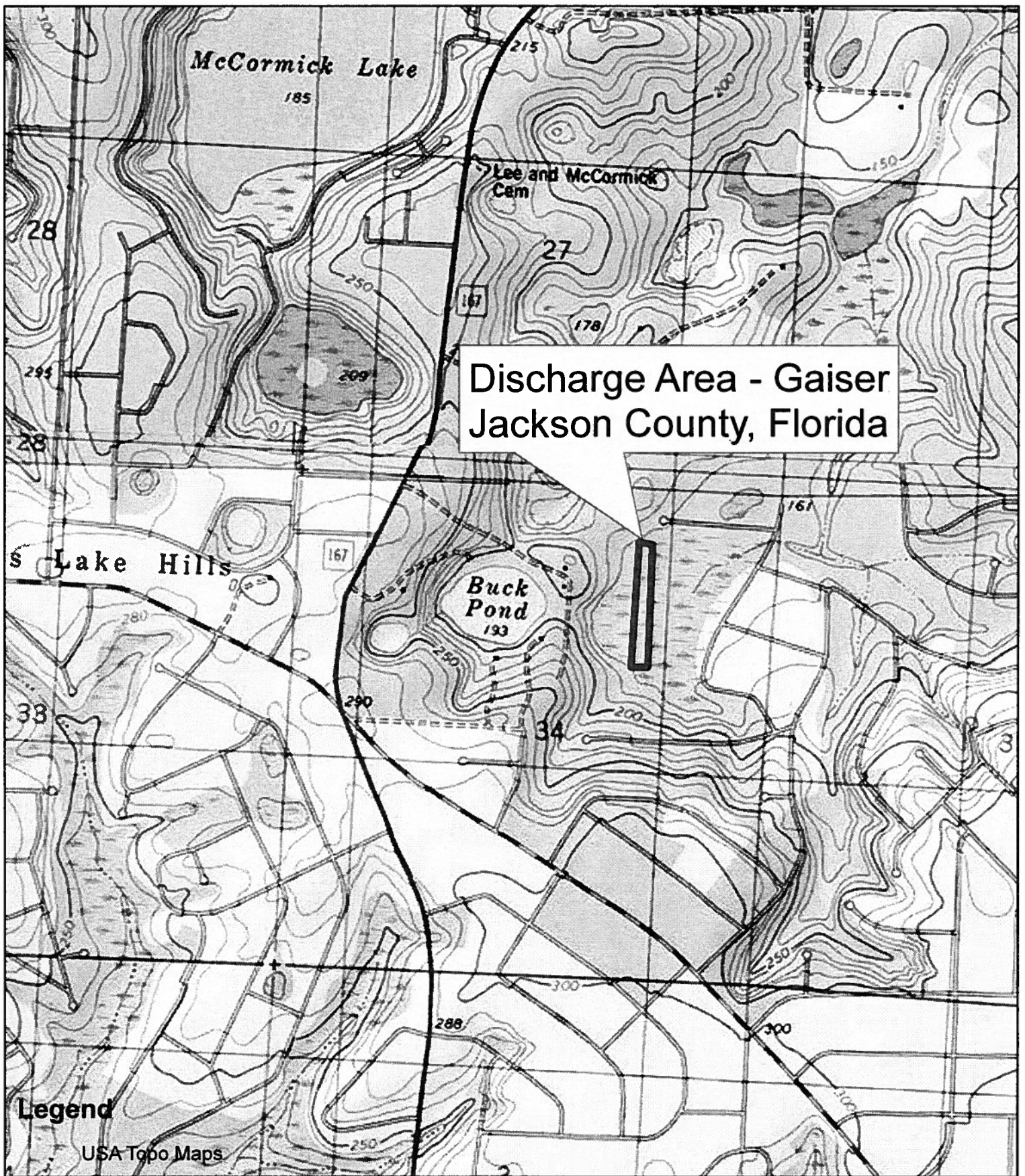


Exhibit A - Gaiser Property
Jackson County, Florida



0 0.15 0.3 0.6 Miles

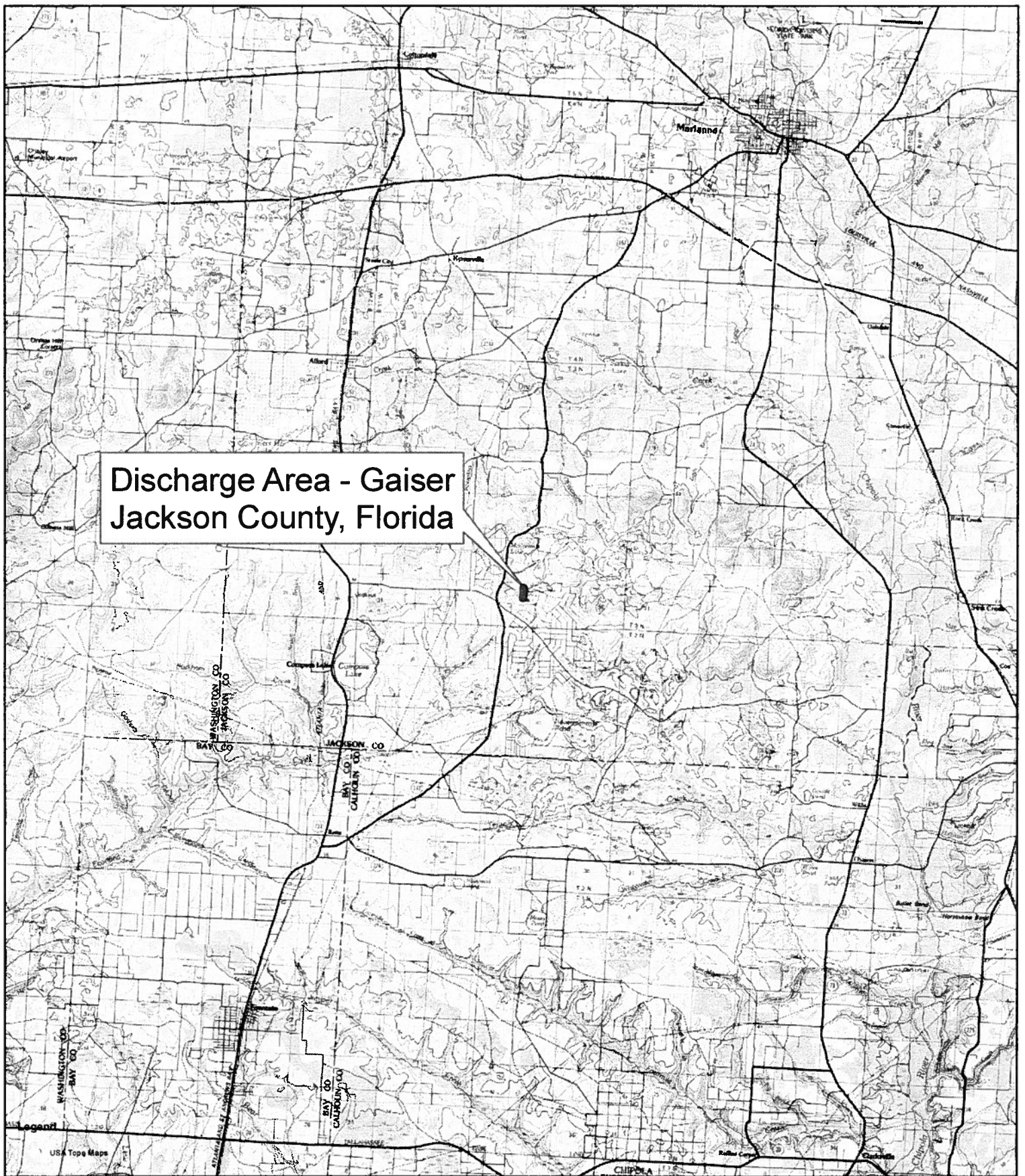


Exhibit B - Gaiser Property Jackson County, Florida



Restoration Plan Gaiser Property

I. Introduction

The subject property is owned by Dr. Cory Gaiser, 2357 Foxworth Drive, Panama City, FL 32405. The property is zoned for Agricultural and Timberland and is currently used as a horse and cow pasture with a proposed thirty head of cattle and a minimum of eight horses. The agricultural pond constructed along a portion of the eastern property boundary is approximately 60' wide x 1,200' long. This pond is necessary for livestock watering, and will be reduced in size to two smaller north and south ponds. The road adjacent to the pond is used to move livestock from the north side of the property to the south, to allow livestock access to the pond, and to allow for perimeter fence maintenance. The existing road will be removed. Livestock will be moved from the north side of the property to the south using upland areas west of the existing road and pond.

II. Site Location and Access

The subject property is located in Jackson County, FL, Section 34, Township 3 North, Range 11 West. The property can be accessed from Highway 231 (US 75), then proceeding north on Highway 167, and then proceeding east on Honeybee Lane. (Figure 1, below).

III. Current Conditions

The geography/topography of this site is low rolling sandy ridges, which support Sandhill plant communities that grade down to Baygalls and Sandhill lakes. The site is undeveloped with the exception of agricultural fields on the southwest portion of the site (Figure 2, below). On the eastern property boundary, a maintenance/ agricultural road runs along the property boundary and a pond has been constructed adjacent to the agricultural road. The road is 1,490' long and 52' wide (from toe of slope to toe of slope) and the pond is 1,192' long x 61' wide. The pond depth varies, but is 3-5' deep on average. The road is vegetated / stabilized with pasture grass.

Water levels within the pond are regulated by rainfall and seepage from the surrounding uplands. The uplands grade down through seepage slopes into the baygall and water flows from the west to east into the pond. The pond level rises and falls depending on rainfall, but has a normal pool that corresponds to the wetland water table. There are culverts located on the north end and the south end of the pond that provide a hydrological connection to wetlands east of the parcel.

Exhibit C – Gaiser Restoration Plan

Figure 1. Site Location Map

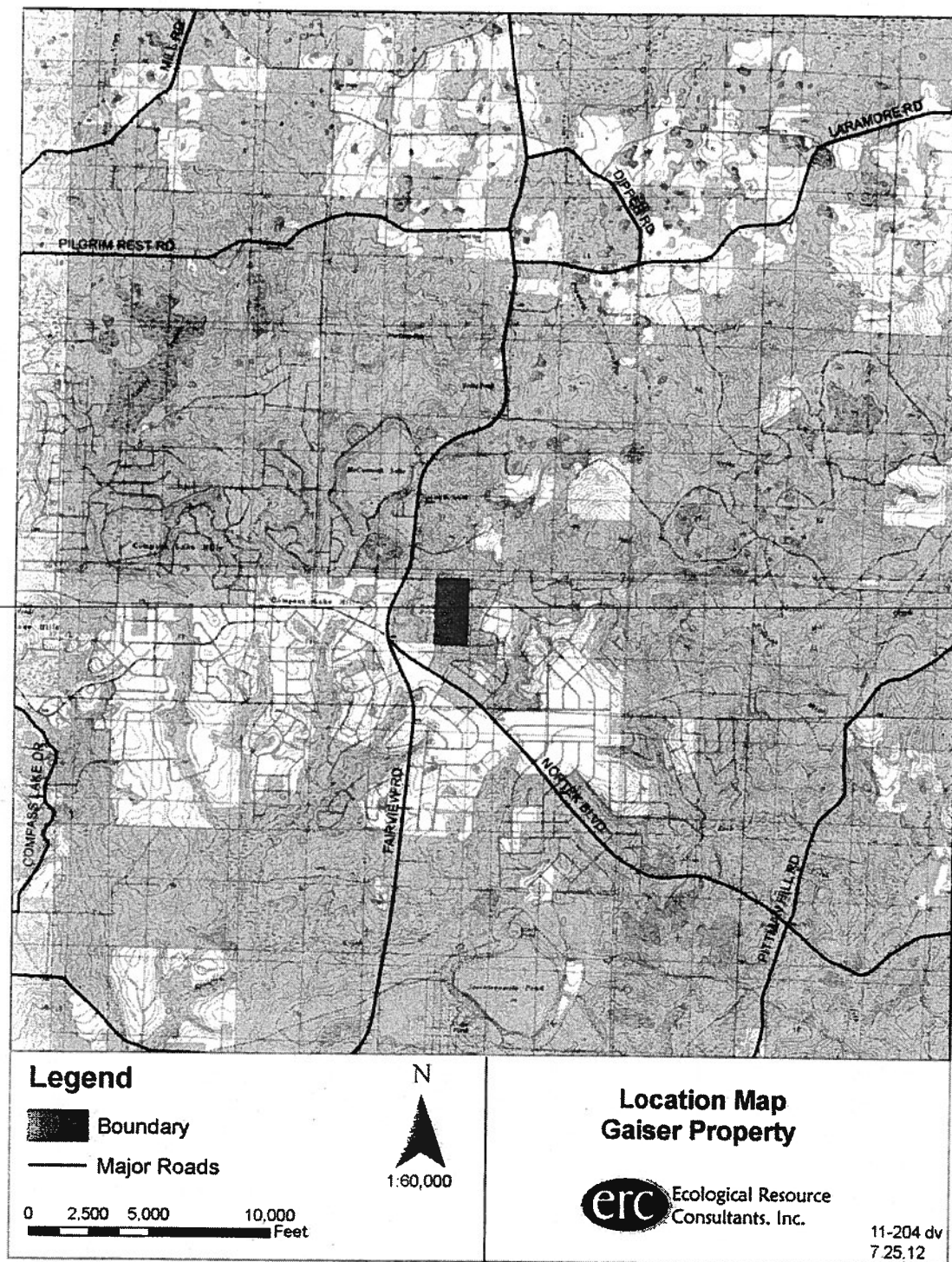
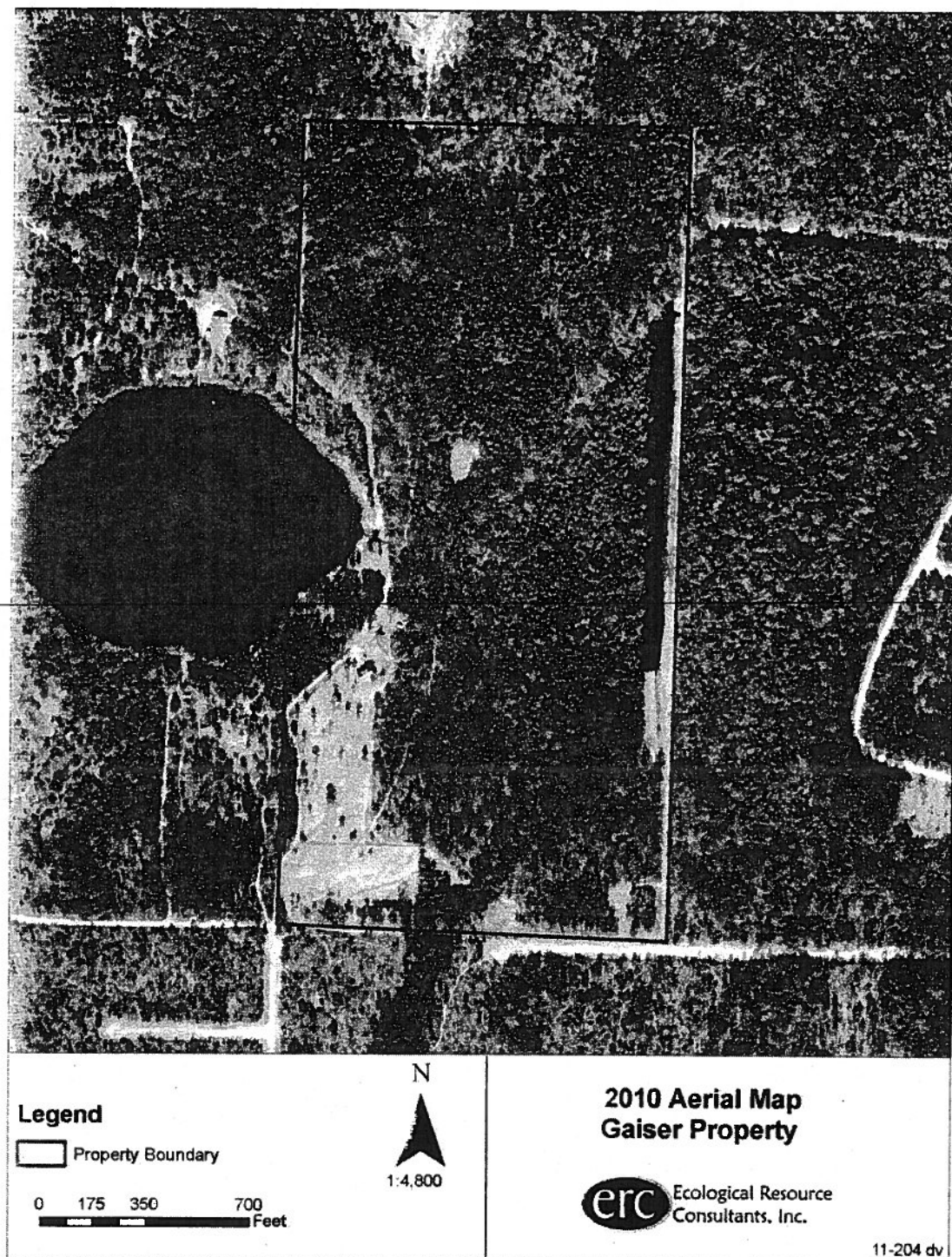


Figure 2. Aerial Site Map



III. Proposed Conditions

It is proposed that the pond area will be reduced and that the agricultural road will be removed as shown on Figures 3, 4, and 5 (below):

A. Pond

Two ponds will remain to the north and south of the existing pond following restoration activities. Each remaining pond will be approximately 100' long x 60' wide and approximately 5' deep. The central portion of the existing pond (approximately 1,000' long x 60' wide) will be regraded to the elevation of the adjacent wetlands. It is anticipated that the natural seedbank from the adjacent wetlands will provide adequate seed propagules to revegetate the restored areas for the filled pond. Thus, no planting is proposed. The restored area will be regraded so that it continues to meet the Federal jurisdictional criteria for wetlands.

B. Existing Roadway

The existing roadway will be scraped down to the grade of the adjacent wetlands. The material removed from the existing road will be used as the fill material for the existing pond restoration. Since the road was constructed with the excavated material from the pond, it is expected that the road material will provide appropriate material for the reestablishment of wetland soils, hydrology, and vegetation.

C. Construction Methodology

Prior to the start of construction, the property owner will install silt fencing or similar erosion control Best Management Practices (BMPs) to protect adjacent wetlands and retain excavated fill material within the existing pond area. These BMPs will be maintained throughout the restoration process and will be inspected weekly and after rain events. The road excavation/scrape down will be accomplished from the center of the existing roadway working south or north to minimize impacts to adjacent wetlands.

Figure 3. Restoration Areas Map

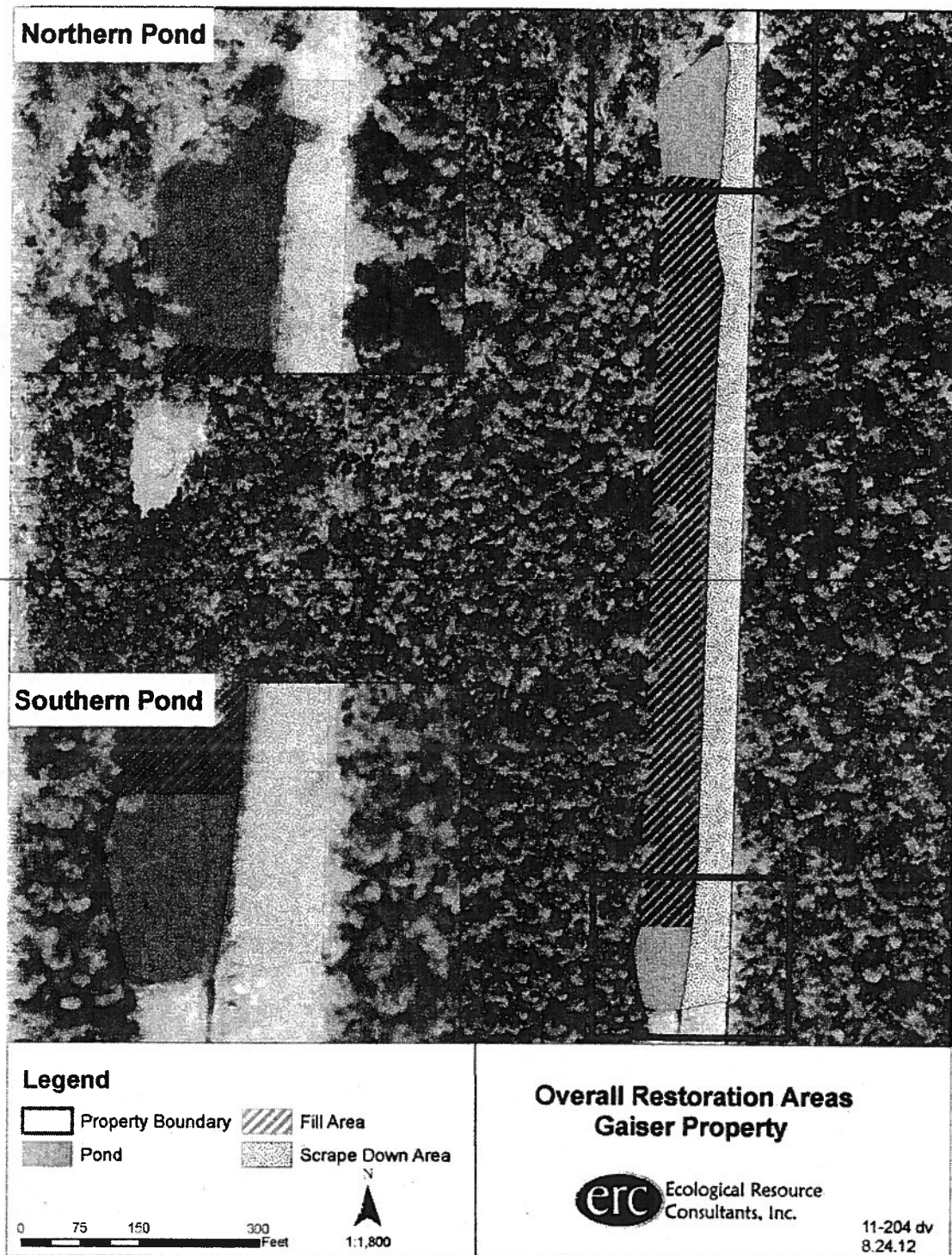
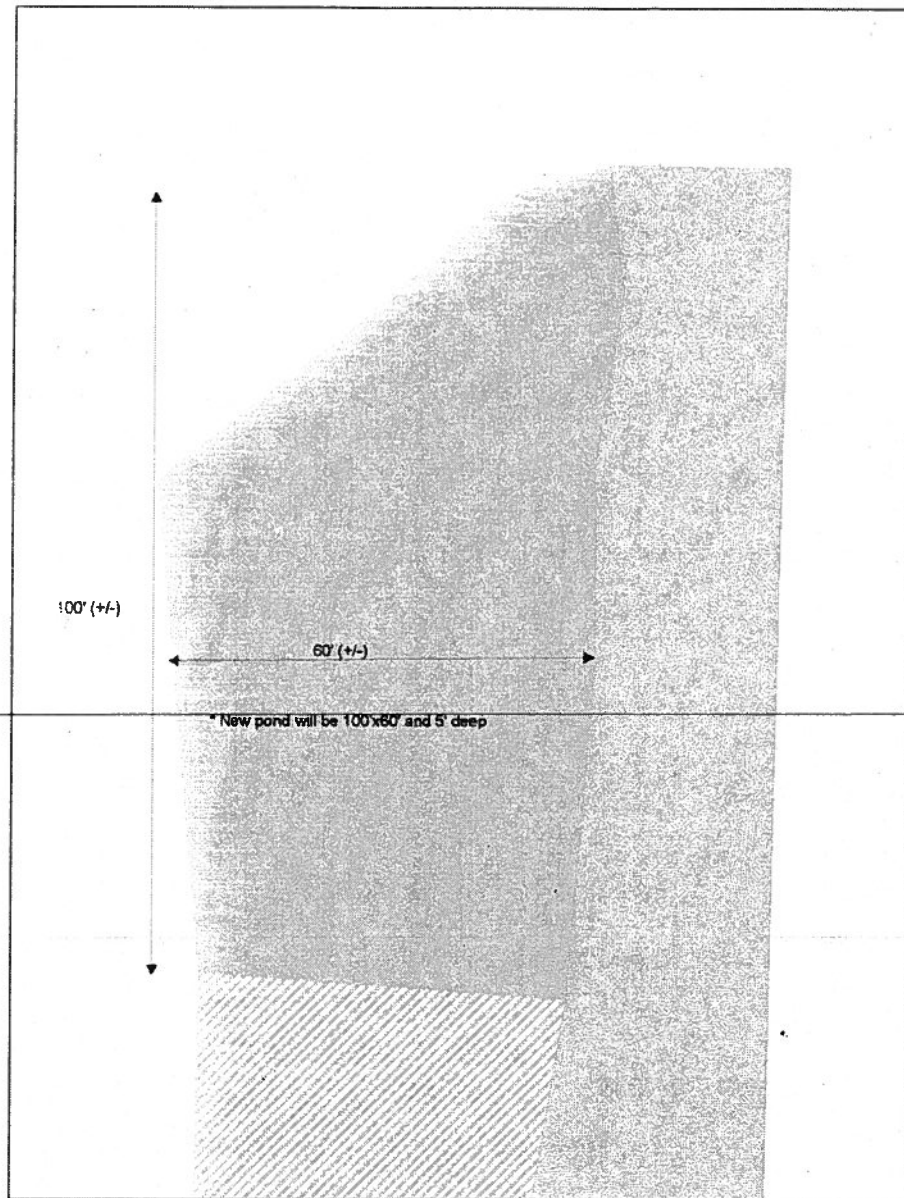


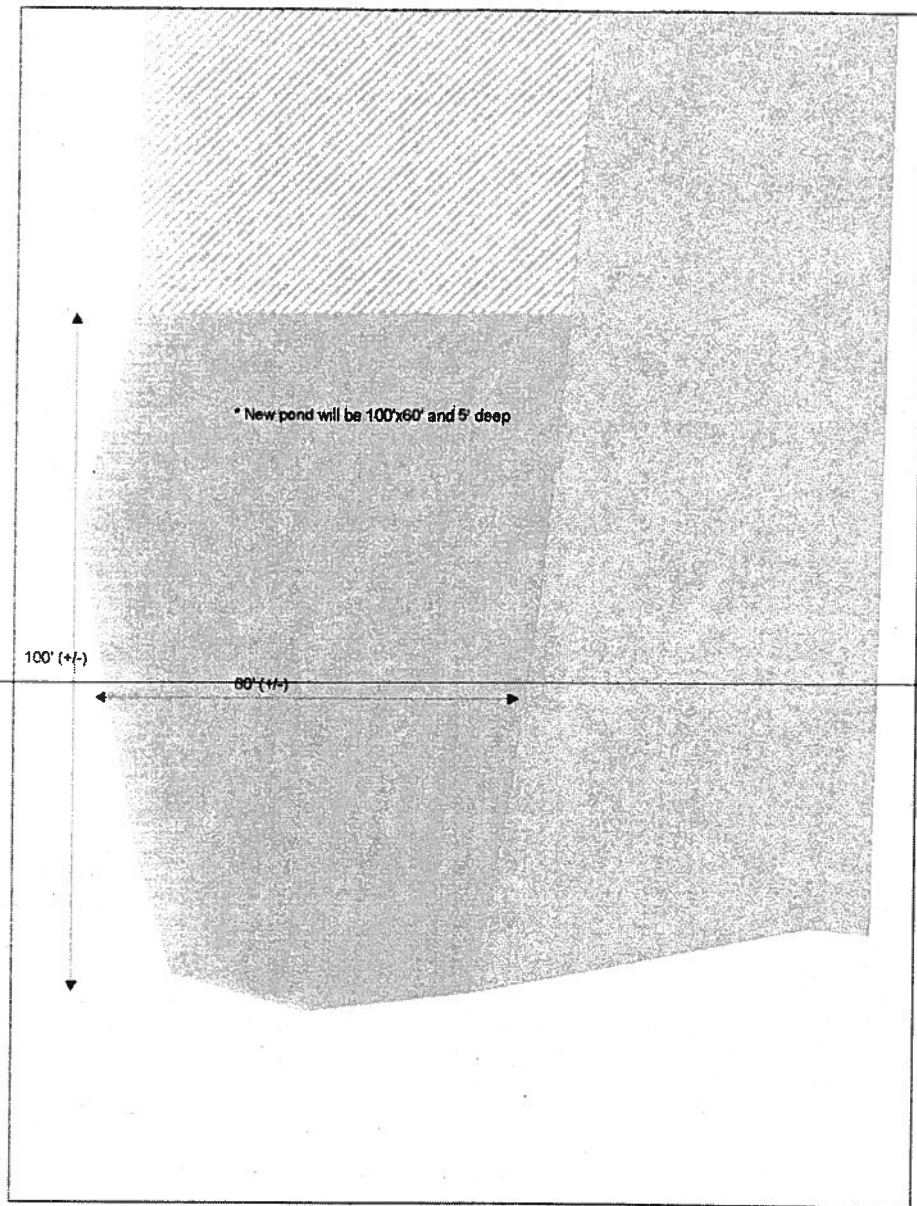
Figure 4. Northern Pond Detail



Legend

	Property Boundary		Fill Area
	Pond		Scrape Down Area

Figure 5. Southern Pond Detail



Legend

	Property Boundary		Fill Area
	Pond		Scrape Down Area

